OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA

REPORT TO THE SPEAKER
OF THE LEGISLATIVE ASSEMBLY

OF THE INVESTIGATION

BY THE ETHICS COMMISSIONER

INTO ALLEGATIONS INVOLVING
ROBERT FISCHER,
MEMBER FOR WAINWRIGHT

January 9, 2002

I. ALLEGATIONS

On November 15, 2001, Mr. Robert Fischer, Member of the Legislative Assembly for Wainwright, gave me a letter which requested that I investigate a number of alleged breaches of the *Conflicts of Interest Act* (the "Act"). In that letter, Mr. Fischer informed me that he had entered into two Alberta Treasury Branch ("ATB") mortgages for the purchase of two units of a condominium complex called Greenwood Acres. Mr. Fischer also informed me that in addition to these two units, he had also failed to disclose to me his acquisition of an additional six units of the same condominium complex and a $24,000 payment that he received as part of a buyback agreement.

II. MY AUTHORITY TO CONDUCT AN INVESTIGATION

Section 22(3) of the Act provides that a Member of the Legislative Assembly may request that I investigate an alleged breach of the Act by the Member:

> *22(3) A Member may request in writing that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by a Member.*

Section 23(1) of the Act provides that I may conduct an investigation:

> *23(1) On receiving a request under section 22 or where the Ethics Commissioner has reason to believe that a Member has acted or is acting in contravention of advice, recommendations or directions or any conditions of any approval or exemption given by the Ethics Commissioner to the Member under this Act, and on giving the Member concerned reasonable notice, the Ethics Commissioner may conduct an investigation with or without conducting an inquiry.*

III. INVESTIGATION

During the course of this investigation, I chose to conduct several interviews with Mr. Fischer and to obtain a statutory declaration from him. Mr. Fischer also provided me with copies of documents under his custody or control that related to the transactions. In addition, I conducted an interview with Mr. Ken Tunnicliffe, Senior Manager of Asset Management at the ATB. During that interview Mr. Tunnicliffe provided me with copies of the two mortgage files. Both Mr. Fischer and Mr. Tunnicliffe co-operated fully with my investigation and responded promptly to my requests for information.

I note that my investigation regarding Mr. Fischer was limited to determining whether Mr. Fischer breached section 8(1)(a) of the Act by entering into a contract to borrow money from the ATB and whether Mr. Fischer breached sections 11, 12 and 18 by failing to disclose the assets, liabilities and income acquired under the purchase transactions. In this investigation there were no allegations or evidence to suggest that Mr. Fischer inappropriately used public funds or used insider information to further or to seek to further a private interest.

IV. FACTS

On July 2, 2000, Mr. Fischer signed eight real estate purchase contracts for the purchase of eight units of a 300-unit condominium complex called Greenwood Acres from a developer called "Village on the Park Asset Management Ltd." Mr. Fischer arranged the financing for these purchases through his mortgage broker, Bainbridge Mortgage Corporation. The total purchase price for all eight properties was $798,500.

On July 25, 2000, Mr. Fischer met with Mr. Paul Wozniak, a lawyer who acted for both Mr. Fischer and the financial institutions. At that meeting, Mr. Fischer signed the mortgage documents for the eight properties in the total amount of $519,025. Two of the mortgages were ATB mortgages. One of the ATB mortgages was for $63,000 and the other ATB mortgage was for $64,400. Although Mr. Fischer acknowledges that he signed the ATB mortgages, he states that, at the time he signed the mortgages, he did not realize that the ATB was the lender for two of the mortgages. He also emphasizes that he did not receive any preferential treatment from the ATB, nor did he exert an improper influence on the ATB.

On July 25, 2000, Mr. Fischer also signed buyback options for each of the eight properties. These agreements gave Mr. Fischer the option of selling the properties back to the developer for the amount of the mortgage plus a payment of $3,000 per unit.

On August 7, 2000, the ATB sent Mr. Fischer the first statement of account informing Mr. Fischer of the amount owing on each of the mortgages. The ATB also sent Mr. Fischer additional statements of account on December 31, 2000, February 7, 2001, April 30, 2001 and August 31, 2001.

Mr. Fischer subsequently gave notice to the developer of his intent to exercise his buyback option and, as a result, on September 28, 2000, he received a cheque in the amount of $24,000. However, although Mr. Fischer gave notice of his intent to exercise this option, the financial institutions refused to permit the developer to assume the mortgages from Mr. Fischer. As a result, Mr. Fischer still holds title to the eight properties.

On either November 13, 2001, or November 14, 2001, Mr. Fischer met with a senior manager of the ATB, Mr. Ken Tunnicliffe at Mr. Tunnicliffe's request. Mr. Tunnicliffe

states that, at that meeting, he discussed the *Conflicts of Interest Act* with Mr. Fischer as well as other concerns regarding the mortgages.

On November 15, 2001, Mr. Fischer came to my Office and disclosed his acquisition of the eight properties, the existence of the mortgages, and the income that was generated from the transactions.

On November 20, 2001, Mr. Fischer paid the amount that remained outstanding on each of the ATB mortgages. As such, Mr. Fischer no longer has an ATB mortgage.

V. FINDINGS

(1) ATB Mortgages

Section 8(1)(a) of the *Conflicts of Interest Act* states:

> *8(1 A Member breaches this Act if, while being a Member, the Member or a person directly associated with the Member becomes a party to a contract within any of the following classes:*
>
> *(a) a contract under which the Member or the person directly associated with the Member borrows money from a treasury branch;*

The Member states that although he entered into the ATB mortgages, he did so without knowing the identity of the lender. The Member also states that he did not receive any preferential treatment from the ATB, nor did he exert any influence on the ATB. The ATB also confirms that the Member did not receive any preferential treatment, nor did the Member exert any influence.

However, notwithstanding the above, section 8(1)(a) of the Act is clear. It states that a Member breaches this Act if, while being a Member of the Legislative Assembly, the Member becomes a party to a contract to borrow money from the ATB. I note that the Act does not provide me with any discretion if a prohibited contract is entered into under section 8, even if the Member, at the time of signing, did not realize that the ATB was the lender and evidence shows that the Member did not receive any preferential treatment or exert any influence.

I also note that although the Member states that he did not realize that the ATB was the lender, the Member was made aware that the ATB was the lender in the early part of August 2000, when he received the first mortgage notice from the ATB. Although the Member states he attempted to exercise his buyback option on several occasions, the Member did not make arrangements to pay out the ATB mortgages until November 20,

2001, approximately 15 months after he first became aware that he had entered into the contracts.

I find that the Member, while a Member of the Legislative Assembly, entered into two contracts to borrow money from the ATB. As such, I find the Member to be in breach of section 8(1)(a) of the Act.

(2) Disclosure of Assets, Liabilities and Income

Section 11(1) of the *Conflicts of Interest Act* requires every Member to file a disclosure statement once a year:

> *11(1) Every Member shall file with the Ethics Commissioner a disclosure statement in the form provided by the Ethics Commissioner*
>
> *(a) within 60 days after becoming a Member of the Legislative Assembly,*
>
> *(b) within 60 days after being appointed to the Executive Council if the Member has not filed a current disclosure statement as a Member of the Legislative Assembly, and*
>
> *(c) in each subsequent year at the time specified by the Ethics Commissioner.*

Section 11(3) of the *Conflicts of Interest Act* states that a Member must file, within 30 days, an amending disclosure statement if there are material changes to the current disclosure statement:

> *11(3) A Member shall, within 30 days after the occurrence of any material changes to the information contained in a current disclosure statement, file with the Ethics Commissioner an amending disclosure statement in the form provided by the Ethics Commissioner setting out the changes.*

Section 12 of the *Conflicts of Interest Act* outlines what information a Member must disclose in the disclosure statement. In particular, sections 12(a) and 12(c)(i) require that a Member disclose the Member's assets, liabilities and income:

> *12 A disclosure statement*
>
> *(a) shall include a statement, as of a date determined by the Ethics Commissioner, of the assets, liabilities and financial interests of the Member, of any private corporation controlled by the Member and of any private corporation controlled by a*

combination of the Member and the Member's spouse or minor children, but not including investments in a blind trust,

...

(c) shall include a statement

(i) of the income that the Member and persons referred to in clause (a), ...

have received in the preceding 12 months or expect to receive in the next 12 months and, to the extent required by the Ethics Commissioner, of the sources of income

Section 18 provides that a Member breaches the Act if the Member does not file the required statements in time or knowingly gives false or misleading information in a statement:

18 A Member breaches this Act if the Member does not file a disclosure statement, an amending disclosure statement or a return within the time provided by section 11 or section 15, as the case may be, or if the Member knowingly gives false or misleading information in a statement or return.

After reviewing the information and evidence before me, I find that the Member breached sections 11, 12 and 18 of the Act.

On July 2, 2000, the Member signed the real estate purchase contracts for eight condominium units valued at $798,500, and on July 25, 2000, the Member entered into eight mortgages amounting to $519,025. Although the Member had numerous opportunities to do so, he did not disclose the existence of these assets and liabilities to my Office until November 15, 2001, approximately 16 months after he entered into the mortgages and contracts.

My records indicate that the Member's contact with my Office included the following:

June 22, 2000	Member filed his 2000 disclosure statement
June 29, 2000	Member met with me to review the 2000 disclosure statement
October 16, 2000	My Office provided the Member with a proposed 2000 public disclosure statement
October 26, 2000	Member informed my Office of amendments to the 2000 public disclosure statement but failed to disclose the assets and liabilities acquired through the purchase transactions

June 13, 2001	Member filed his 2001 disclosure statement but failed to disclose the assets and liabilities acquired through the purchase transactions
September 11, 2001	Member met with me in my Office to review the 2001 disclosure statement but did not disclose the assets and liabilities acquired through the purchase transactions.
October 5, 2001	My Office provided the Member with a proposed 2001 public disclosure statement
October 19, 2001	Member advised my Office that he had no changes to make to his 2001 public disclosure statement

I note that there was no obligation on the Member to disclose the assets and liabilities on June 22, 2000, when he filed his 2000 disclosure statement nor on June 29, 2000, when he met with me to review the 2000 disclosure statement as the Member had not yet entered into the purchase transactions or the mortgages. However, as previously mentioned, section 11(3) of the *Conflicts of Interest Act* requires a Member to file, within 30 days, an amending disclosure statement if there are material changes to the current disclosure statement. The Member did not do this.

In particular, the Member did not amend his 2000 disclosure statement nor the proposed 2000 public disclosure statement to include these assets and liabilities. The Member also did not disclose these assets and liabilities on his 2001 disclosure statement nor did he amend the proposed 2001 public disclosure statement. I am satisfied that these omissions were not inadvertent.

Similarly, I find that the Member, for approximately 14 months, did not accurately disclose the $24,000 that he acquired on September 28, 2000. During this investigation, the Member acknowledged that although he identified the $24,000 on his 2001 disclosure statement, he described the $24,000 as income from oil and gas shares instead of income which resulted from the purchase transactions.

It is my view that the disclosure provisions outlined above reside at the very heart of the Act. These provisions serve not only to provide the public with information regarding a Member's conduct but also enable my Office to give advice and monitor a Member's financial dealings in order to ensure compliance. If a Member regards the disclosure requirements as an afterthought or of no consequence, transparency and accountability to the public will be eroded.

In this regard I note that I require every Member to sign, as part of the their private disclosure statement, on an annual basis, a declaration stating that their disclosure statement is accurate to the best of their knowledge. The declaration that the Member signed as part of his 2001 disclosure statement read as follows:

DECLARATION:

I am familiar with the requirements of the Conflicts of Interest Act, Chapter C-22.1, 1991 Statutes of Alberta.

The private disclosure statement, together with all previous private disclosure statements and notices of material change submitted to me, accurately discloses, to the best of my knowledge, all assets, liabilities, financial interests, and income of myself, my spouse, my minor children, and private corporations controlled by any of us, or a combination of us, as required by that Act.

I understand that the Member is embarrassed and remorseful for failing to disclose these assets, liabilities and income in a timely and accurate manner. However, the fact is that the Member breached sections 11, 12 and 18 of the Act by knowingly withholding information regarding his assets and liabilities and giving false information on his 2001 disclosure statement regarding the $24,000 in income that he received as a result of the buyback agreement.

VI. SANCTION

The *Conflicts of Interest Act* provides me with discretion to recommend a sanction if I determine that a breach of the Act has occurred. Section 25(2) sets out my range of options in this regard, including recommending a reprimand, penalty, suspension or expulsion from the Legislative Assembly.

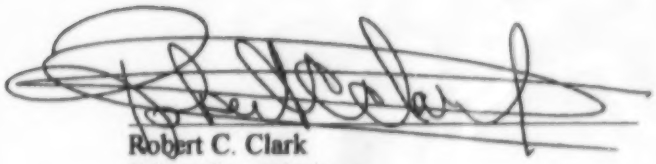
As previously mentioned, I find that the Member breached a number of sections under the Act. I consider these breaches a matter which I believe would warrant a serious sanction under the Act because such failures undermine the integrity of the system. I note that the preamble to the Act sets a standard of conduct that was not adhered to in this case. It reads as follows:

WHEREAS the ethical conduct of elected officials is expected in democracies;

WHEREAS Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members; and

WHEREAS Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality:

However, notwithstanding the above, given the fact that the Member has recently resigned from his position as a Member of the Legislative Assembly in anticipation of this investigation report, I do not find it necessary to make a specific recommendation as to sanction. I emphasize that if the Member had come to my Office as soon as he became aware of the ATB loans and accurately disclosed the assets and liabilities and income in a timely manner, this matter would not have reached the stage that it did.



Robert C. Clark
Ethics Commissioner
January 9, 2002